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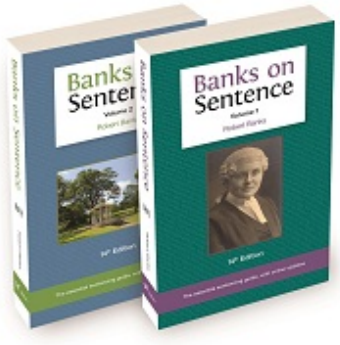

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ABH

Club attacks

R v Clayton 2018 EWCA Crim 2179 D pleaded to ABH. He, his sister, S, and his girlfriend, G, and G's sister, V, spent the evening at a night club. At about 1 am, they were outside the club when an argument broke out. A witness described S as intoxicated and unstable. D was seen to be behaving in an aggressive manner. V tried to act as a peacemaker so as to calm S. D pushed S away and punched V in the face causing her to fall backwards and hit her head on the kerb. V lost consciousness. D did not go to her aid. He was detained by door staff. V had a large laceration to her nose, which left a scar, and another laceration to the back of her head. D gave no comment in interview. D was now aged 23. He had five previous convictions on three occasions, including in 2014, two ABHs (14 months' YOI) and in 2015, battery (conditional discharge, which was breached by a criminal damage offence – the re-sentence was a community order). D had also received a public warning about two more violent offences. One of the offences involved D kicking and punching a victim on the ground with others. He had some references. The Judge said the CCTV showed that D had been fortunate that V did not crack her skull open, which would have made the offence manslaughter. The court found greater harm, V had been particularly vulnerable, the culpability was high and D intended to commit a more serious offence than had actually taken place. The Judge placed the offence at the top of Category 1, moved to 4 years and with plea passed 3 years. Held. This was at the top of Category 1, so we start at 3 years and so with plea, **2 years 3 months**.

Arson

Reckless arson Defendant aged 15

Discount for the age of offender

R v JT 2018 EWCA Crim 1942 D pleaded to reckless arson. In May 2016, D was on a bus and when it reached the bus station, he set light to some newspapers and magazines on the floor, and that set fire to the seats. The driver had already left the bus, but on being told of smoke, he tried to extinguish the flames but failed. The bus was completely destroyed and very significant damage was done to the fabric of the bus station. Damage was also caused to power and electric cables, which disabled automatic doors, ticket machines etc. The roof cladding 'in the area of multi-storey car park' was also damaged. The repairs cost about £1.8m. D was readily identified, but was not arrested until January 2017. Six months later, he was summonsed to court. The basis of the plea was that D had lit a newspaper and left without ensuring that it had gone out. The psychiatric report was not available until March 2018. D was aged 15 (now 17) and his mother had put him into care. He didn't want that, but all his relatives said he could not live with them. In October 2016, he had convictions for theft, criminal damage and threatening behaviour (a Referral Order). In September 2017, he had convictions for theft and criminal damage (YRO). Between May 2016 and May 2017, D had four different placements. In June 2017, he was sent to an activity placement which led to a turnaround in his behaviour. The pre-sentence report said D was now a very different young person, focused on making a success of life. Further, this progress would be at risk if there were a custodial sentence. The psychiatric report said D had symptoms consistent with ADHD, a condition which gives rise to impulsive behaviour. The Judge started at 7 years and because of D's youth took one third off, making 56 months, and with plea made that 3 years' detention. Held. The starting point for an adult would not exceed 6 years. The Judge had not followed the detailed advice in the *Sentencing Children and Young People Guideline 2017*. His approach was cursory and inadequate. The one-third discount was an inadequate reflection of what the guideline suggested. Paras 1.2, 1.5 and 1.6 are particularly apposite, see 13.29. The approach needs to be individualistic. The approach is for a 15-year-old. There was no proper basis for the reduction being one third rather than one half. We would have moved to 3 years and with plea 2 years' DTO. The 22-month delay was a significant factor. We recognised the very low culpability involved. This was an exceptional case, so **YRO** with intensive supervision and surveillance.

Note: The low culpability of setting fire to newspapers and not checking that the fire was extinguished is particularly important. Following the Kings Cross tube fire, it is surprising that buses don't have to have flame-resistant fabric. Had that been so in this case, the damage would have been minimal. Ed.

Offences against the Person Act 1861 s 20

Revenge

R v Sparham 2018 EWCA Crim 2629 D pleaded to section 20. He and V lived in the same block of flats. V had chronic osteoporosis and could not move quickly. There was an altercation between D and the mother of his child, M. D called the police and removed M. M returned and V heard shouting from D's flat. V saw M lying on the grass. V asked her if she wanted him to call the police. She said she did and the police were called. D came out and was aggressive to M and approached her. V tried to defuse the situation and told D he would arrest him for breach of the peace. D headbutted V, who fell to the ground in extreme pain to the face and hip. D was arrested. V had two fractures to his pelvis, one to his face and was in considerable pain. There was swelling to his eyebrow, his eye and his cheek. In his basis of plea, D accepted overreacting and lashing out but said the fall caused the most serious injury, which was in part due to V's bone condition. D was aged 34. He had 44 previous convictions on 25 previous occasions. Six were 'against a person'. The convictions included: in 2009, three batteries and other offences (18 weeks); in 2011, battery (non-custodial); in 2012, battery and harassment (23 weeks suspended, which was later activated); again in 2012, assault PC (non-custodial); and in 2014, breach of a Restraining Order and a suspended sentence (non-custodial). The pre-sentence report was positive. The defence relied on references and that a job was open to him. Held. The case was on

the cusp of Categories 1 and 2 and not Category 1. We start at 30 months, not 36, and move with the aggravating and mitigation factors to around 33 months, not 40, and so with 20% plea discount, **2 years 2 months**, not 2 years 8 months.

Robbery

Dwellings

R v Evans 2018 EWCA Crim 2662 D pleaded to two robberies, two kidnaps, driving whilst disqualified, TDA and excess alcohol. One evening, D knocked on the door of V1 and his wife V2, who were aged in their 60s. V1 opened the door and D pushed him in the chest and said, "Give me your money." D repeated this and added, "or I will break your jaw". V1 tried to engage D and said he had money upstairs. D said, "If I get money, I will leave". They went upstairs and D was given £250 cash. D demanded more. V2 went to where a bag of money was usually kept, but there was none. She picked up a knife but D disarmed her. D forced rings off V2's fingers, cut a bracelet from her wrist and took some jewellery boxes. Next, D subjected V2 to sexual degradation (details not given). V1 and V2 returned downstairs and were asked for their car keys and told, "You must have credit cards". The three got in the victims' car and D placed a knife on V1's knee. D got out when they arrived at a Tesco cashpoint and the victims managed to escape. D fled in the victims' car and was stopped by police, who had to break a window to arrest him. D failed a breath test and was found to be disqualified. He made no comment in interview. D was aged 50. He had 115 previous convictions on 36 occasions, including rape, section 20 and 'other crimes of violence'. In 2003 there were two dwelling burglaries, two robberies and one attempted robbery (8 years). On his release he breached his licence and was returned to prison. In 2012, there were two robberies (12 years). The victims for both sets of previous robberies were elderly and threats and violence were used. When released, D absconded and he was at large until arrested for this offence. The pre-sentence report said he had drink and drug problems and his criminality was entrenched. The Judge found the victims had suffered severe psychological harm making this a Category 1A offence. Held. This was a terrifying experience exacerbated by the sex degradation and the kidnap. We note the substantial aggravating factors as well as there were no injuries, little or no planning, only one individual and no disguise. We move to 20 years not 24, so with plea, 15 years not 18, which makes **life** with a **minimum term of 7½ years** not 9 years. The kidnap sentence is reduced from 8 years determinate to 7**½** years.

Variation of sentence

There must be a hearing in open court

R v Holland 2019 EWCA Crim 481 The Judge intended to apply a full plea discount but only applied a 25% discount. Defence counsel e-mailed the Judge pointing out the error. The Judge simply corrected the error without a hearing. The defence appealed on other grounds. Held. A hearing was necessary to ensure open justice. However, the fact there was no hearing did not render the variation a nullity.

R v Cox 2019 EWCA Crim 71 D pleaded to driving and other offences. After communications, both parties were invited to comment about varying the order by an agreed tag time discount and disqualification under the totting up rules. The parties did so and the sentences were varied to deduct 18 days of tag time and impose 10 months' disqualification. This was done without a hearing. The defendant appealed about the custodial period. Held. That period was not excessive. We see no objection to the agreed tag time being deducted without a hearing. The disqualification should not have been dealt with administratively. D was opposing an order being made. Despite both parties being content with the procedure, potential disqualification was a serious matter. It should have been dealt with in open court with the defendant present. The public should be able to [see justice being done]. The sentence remains valid and we uphold both variations, which the defence don't challenge.

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